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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

SWINEHART, E

ART UNIT

PAPER NUMBER

3612

2

DATE MAILED:

07/20/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-25 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-25 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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### DETAILED ACTION

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP 609A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.
2. Figures 4-7 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).
3. The disclosure is objected to because of the following informalities: In the specification, on page 49, "from a relatively material" is not clear. Furthermore, clarification is required, re the disclosed shock wave formed by the swim fin of the present invention. The examiner does not believe that a swim fin will achieve the velocity required to produce a shock wave. Clarification and/or correction are required.
4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1-12,14-16,19,22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 1, "said 5%" and "said compression range" lacks antecedent basis in the claim(s), and "similar..." renders the metes and bounds of the claim difficult to determine, as such is comparative in nature.

In claim 2, "are deflected passed..." is not clear.

The metes and bounds of claims 4,9 and 10 cannot be ascertained, as such essentially sets forth ranges within ranges.

In claim 14, it is unclear if "said predetermined angle" has been provided with antecedent basis in the claim(s), as a "predetermined reduced angle" had previously been set forth.

In claim 15, "similar..." renders the metes and bounds of the claim difficult to determine.

The purpose for the underlined terminology in claim 19 is unclear.

In claim 22, "similar" is indefinite as noted above.

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 1-25 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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Applicant states the criticality of materials used and dimensional relationships of the flipper, yet fails to teach or give examples as to the actual construction of same, other than to state how it is to perform. Such a disclosure would therefore require one of ordinary skill in the art to perform an undue amount of experimentation to arrive at a combination of materials and thickness relationships which operate as claimed.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Barbieri et al.

Barbieri et al. teaches a swim flipper constructed of the materials as claimed, and provided with rounded ribs 3 as claimed. Since the fin of Barbieri et al. is constructed of the material of the invention, and exhibits a thickness and rib shape generally as disclosed, it will inherently function and operate as disclosed.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wozencraft, Jayet and Churchill teach swim fins which anticipate at least some of the claims of the present invention, as they disclose the material of construction of the present invention, as well as rounded ribs.

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11. Papers relating to this application may be submitted to Technology Center 3600 by facsimile transmission. The submission of such papers by facsimile transmission must comply with the notice published in the Official Gazette, **1096 OG 30** (November 15, 1989). The Fax Center number is (703)-305-3597.

12. Any inquiry concerning this communication should be directed to Ed L. Swinehart whose telephone number is (703)-308-2566.

13. Any inquiry of a general nature or relating to the status of the application should be directed to the Technology Center 3600 receptionist whose telephone number is (703)-308-1113.

July 15, 1999

**Ed L. Swinehart**  
**Primary Examiner**  
**Art Unit 3612**